



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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1. CRM-M-23844-2023
Date of decision: May 7th, 2024
Balwant Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

2. CRM-M-3920-2024
Harbans @ Bansilal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Kartar Singh, Advocate
for the petitioner (in CRM-M-23844-2023).

Mr. Kushager Goyal, Advocate
for the petitioner (in CRM-M-3920-2024).

Ms. Deepshikha Chauhan, Assistant Advocate General, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above-mentioned petitions for grant of regular bail as they arise out of same FIR i.e. FIR No.173 dated 30.07.2021 under Section 22(C)/27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar, Ratia, District Fatehabad.

2. Learned counsel for the petitioners submit that even though they were arrested way back on 30.07.2021 and challan was presented on 18.12.2021, the trial had not concluded as none of the 23 witnesses cited by the prosecution had been examined till date. While drawing the attention of

this Court to the zimni orders, which have been annexed as Annexure P-7, it has been asserted by the learned counsel that after the charges were framed on 14.11.2023, on the two following dates, the prosecution witnesses had not appeared to get their evidence recorded. It has been prayed that in the circumstances, the petitioners cannot be made to languish in custody for no fault of theirs. Learned counsel while placing reliance upon judgment of Hon'ble the Supreme Court in ***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (SLP (Crl.) No.6690/2022)*** decided on 25.01.2023 has submitted that in almost identical circumstances, the Apex Court had granted the concession of bail to the accused. Learned counsel have also submitted that their false implication in the present case is evident from the fact that there is no case registered against either of them under the NDPS Act.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite has not disputed the stage/status of the trial, however, she submits that since the charges were framed only in November 2023, there was no question of the prosecution evidence being recorded earlier on. She submits that the next date fixed before the trial Court is 27.05.2024 when in all likelihood, the prosecution witnesses would be appearing to get their testimony recorded.

4. On a pointed query put to the learned State counsel, she on instructions has not controverted the factum of both the petitioners not being involved in any other case under the NDPS Act, however, she submits that petitioner-Harbans @ Bansi Lal has previously been

involved in a case under the Excise Act, in which he was convicted and sentenced to pay ₹1,000/- fine.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The petitioners have been in custody for close to three years having been arrested on 30.07.2021. No doubt, a recovery of 6,000 tablets of alprazolam and 4,900 tablets of tramadol was allegedly affected from them, however, Hon’ble the Supreme Court in *Dheeraj Kumar Shukla’s case (supra)* has observed as under:-

“.... It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

7. The possibility of the trial concluding in the near future does not seem possible. In the circumstances, the instant petitions are allowed. The petitioners be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

8. Needless to say, in case the petitioners misuse the concession of bail granted to them, the State would be at liberty to seek cancellation of the same.

May 7th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No